

1 Robert Cooper (SBN 209641)
robert.cooper@wilsonelser.com
2 **WILSON, ELSE, MOSKOWITZ,**
EDELMAN & DICKER LLP
3 555 S. Flower Street, 29th Floor
Los Angeles, CA 90071
4 Tel: (213) 443-5100
Fax: (213) 443-5101

5
6 Attorneys for Court-Appointed
Special Litigation Counsel
7 **Law Offices of Ronald Richards**
& Associates, APC

8
9 Ronald Richards (SBN: 176246)
ron@ronaldrichards.com
Morani Stelmach (SBN: 296670)
10 morani@ronaldrichards.com
11 **LAW OFFICES OF RONALD RICHARDS**
& ASSOCIATES, APC
P.O. Box 11480
12 Beverly Hills, California 90213
Tel: 310.556.1001
13 Fax: 310.277.3325

14 **Special Litigation Counsel for Elissa D. Miller, Chapter 7 Trustee**

15
16 **UNITED STATES BANKRUPTCY COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **LOS ANGELES DIVISION**

19 In re

20 GIRARDI KEESE,

21 Debtor.

Case No. 2:20-bk-21022-BR

Chapter 7

**CHAPTER 7 TRUSTEE'S EVIDENTIARY
OBJECTIONS TO THE DECLARATION
OF EVAN C. BORGES AND EXHIBIT 3
ATTACHED THERETO REPLY IN
SUPPORT OF MOTION FOR
RECONSIDERATION**

Date: TBD
Time: TBD
Ctrm.: TBD

1 **TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE:**

2 Elissa D. Miller, the chapter 7 trustee (the "Trustee") for the bankruptcy estate of
3 Girardi Keese, hereby submits the following objections to the Declaration of Evan C.
4 Borges ("Borges") and Exhibit 3 attached thereto in support of Reply in support of Motion
5 for Reconsideration [Docket No. 511] filed by Erika Girardi to reconsider the appointment
6 order of the Law Offices of Ronald Richards & Associates, A.P.C., as Special Litigation
7 Counsel. The Borges Declaration and Exhibit 3 attached thereto are objectionable for
8 several reasons, and should be disregarded in their entirety.

9 **I. SUMMARY OF OBJECTIONS TO BORGES DECLARATION AND EXHIBIT 3**
10 **ATTACHED THERETO**

11 Firstly, Ms. Girardi's reply in support of her motion for reconsideration was
12 untimely. Some of her filings were after the 4:00 p.m deadline and should not be
13 considered on that basis alone. The Special Litigation Counsel and Trustee incorporate
14 the same objections and admissibility problems as were raised in the objections to
15 Exhibits 1 and 2 [Doc. 499].

16 Secondly, the Borges Declaration now seeks to introduce new evidence. The
17 introduction of new evidence in reply papers is improper where the nonmovant does not
18 have the opportunity to respond to the new evidence. (See *J.G. v. Douglas County Sch.*
19 *Dist.*, 552 F.3d 786, 803 n.14 (9th Cir. 2008) ("Where new evidence is presented in a
20 reply to a motion for summary judgment, the district court should not consider the new
21 evidence without giving the [non-]movant an opportunity to respond.") (quoting *Provenz v.*
22 *Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996)). Courts routinely apply this rule to exclude
23 from consideration new evidence presented for the first time in a movant's reply brief.
24 (See, e.g., *Wallace v. Countrywide Home Loans, Inc.*, Case No. SACV 08-1463, 2009
25 U.S. Dist. LEXIS 110140, at *18-19 (C.D. Cal. Nov. 23, 2009) (declining to consider new
26 evidence presented for the first time on reply and noting that "[t]he opposing party should
27 not have to incur the cost and effort of additional filings . . . because the movants
28 deliberately, or more likely inadvertently, held back part of their case") (quotations

omitted); *SEC v. Private Equity Mgmt. Group, Inc.*, Case No. CV 09-2901, 2009 U.S. Dist. LEXIS 75158, at *21 (C.D. Cal. Aug. 10, 2009) (declining to consider new evidence submitted for the first time on reply); *Iconix, Inc. v. Tokuda*, 457 F. Supp. 2d 969, 976 (N.D. Cal. 2006) (sustaining objection to new evidence presented in reply brief); *Wolfe v. Deeb*, No. C 04-5164 CRB, 2005 U.S. Dist. LEXIS 4873, at *2 n.1 (N.D. Cal. Mar. 22, 2005) (court “did not rely” on new arguments submitted in reply); *Davenport v. M/V New Horizon*, No. C 01-0933 SBA, 2002 U.S. Dist. LEXIS 26811, at *7-8. (N.D. Cal. Dec. 17, 2002) (“the Court refuses to consider the evidence Tosco presented in support of its reply brief”).)

Under well-established precedent, the Court should not consider the new evidence that Ms. Girardi attempts to introduce for the first time on reply.

To permit Ms. Girardi to raise new arguments and submit new evidence and authority in its reply brief would be a violation of the Trustee’s due process rights. Had Ms. Girardi raised these issues in her moving papers, Trustee would have had an opportunity to address and rebut them.

Thirdly, as was the case in the Declaration of Evan Borges in support of Motion for Reconsideration and Exhibits 1 and 2 attached thereto, this Borges Declaration submitted in support of Ms. Girardi’s reply and Exhibit 3 are similarly inadmissible.

Ms. Girardi has again selectively compiled various unauthenticated tweets and internet postings while attributing them to Mr. Richards in violation of the rules governing evidence. For example, the Declaration of Evan Borges fails to lay the proper foundation for any of the postings attached to Exhibit 3. There is no assertion that the declarant, Mr. Borges, prepared the compilation himself. The declarant is not a Twitter user to the best of counsel’s knowledge or an expert on Twitter extractions.

Even assuming arguendo that these unauthenticated tweets are admissible, they are not relevant. They do not show that Ms. Girardi was contacted directly. There was no communication to Ms. Girardi- no one directly messaged her which would be the only way to contact her directly. Also, it is factually impossible as to her purported account.

Her counsel is obviously ignorant about Twitter. Had he bothered to review his client's purported account, @erikajayne, he would have realized that her purported account does not allow anyone to direct message her. It is a public account only. It does not allow private communications from anyone from the outside world. Only his client can initiate direct communications on the Twitter platform by her own settings. Under Ms. Girardi's view, an attorney would violate the anti-contact rule by responding to her false statements about their cases every time they responded to a reporter's inquiry or issued a statement in response. There is no ethical rule that was violated.

Accordingly, Ms. Girardi's reply in support of her motion for reconsideration lacks any admissible evidence. See *Wady v. Provident Life & Accident Ins. Co. of Am.*, 216 F.Supp.2d 1060, 1064 (C.D. Cal. 2002) (excluding documents where proponent of the evidence "has no personal knowledge of who maintains the website, who authored the documents, or the accuracy of their contents").

For the foregoing reasons, the Trustee requests that the Court disregard the Declaration of Evan Borges and Exhibit 3 in its entirety. The Borges Declaration and the proffered evidence submitted with it are inadmissible under the Federal Rules of Evidence, as set forth above and in the chart below.

<u>Obj. #</u> <u>¶ (pg.: line)</u>	<u>Statement:</u>	<u>Objection:</u>	<u>Ruling:</u>
#1. ¶2 45:9-11	"Attached hereto as Exhibit 3 is a compilation of Ronald Richards's ("Mr. Richards") tweets and images from Mr. Richards's Twitter page regarding this proceeding and individuals involved in this	Fed. R. Evid. 402, 701, 802 There is neither foundation nor personal knowledge for declarant's assertions.	[] sustained [] overruled

1		proceeding dating back to July 16,	The statements and	
2		2021.”	exhibit 3 are	
3			inadmissible hearsay.	
4			There is no evidentiary	
5			support and declarant	
6			cannot testify as to	
7			what a third party said	
8			out of court.	
9	#2.	“The images comprising Exhibit 3	Fed. R. Evid. 402, 701,	[]
10		are true and accurate depictions of	802	sustained
11	¶3 45:12-	Mr. Richards’s tweets and Twitter	There is neither	
12	13	profile.”	foundation nor personal	[]
13			knowledge for	overruled
14			declarant’s assertions.	

CONCLUSION

The materials challenged in these objections should be deemed inadmissible and disregarded by the Court.

Dated: July 26, 2021

Respectfully submitted,

**LAW OFFICES OF RONALD RICHARDS &
ASSOCIATES, APC**

WILSON ELSEER MOSKOWITZ
EDELMAN & DICKER LLP

By: /s/ Ronald Richards
Ronald Richards
Robert Cooper

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
PO Box 11480
Beverly Hills, CA 90213

A true and correct copy of the foregoing document entitled (*specify*): _____
Evidentiary Objections to Reply Brief

_____ will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) July 26, 2021, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) June 23, 2021, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

July 26, 2021
Date

Ronald Richards
Printed Name

/s Ronald Richards
Signature

2:20-bk-21022-BR Notice will be electronically mailed to:

Kyra E Andrassy on behalf of Plaintiff Elissa Miller

kandrassy@swelawfirm.com,

lgarrett@swelawfirm.com; gacruz@swelawfirm.com; jchung@swelawfirm.com

Kyra E Andrassy on behalf of Trustee Elissa Miller (TR)

kandrassy@swelawfirm.com,

lgarrett@swelawfirm.com; gacruz@swelawfirm.com; jchung@swelawfirm.com

Rafey Balabanian on behalf of Creditor Edelson PC

rbalabanian@edelson.com, docket@edelson.com

Michelle Balady on behalf of Creditor Bedford Law Group, APC

mb@bedfordlg.com, leo@bedfordlg.com

Ori S Blumenfeld on behalf of Creditor Jaime Ruigomez

Ori@MarguliesFaithLaw.com,

Helen@MarguliesFaithLaw.com; Angela@MarguliesFaithLaw.com; Vicky@MarguliesFaithLaw.com

Ori S Blumenfeld on behalf of Creditor Joseph Ruigomez

Ori@MarguliesFaithLaw.com,

Helen@MarguliesFaithLaw.com; Angela@MarguliesFaithLaw.com; Vicky@MarguliesFaithLaw.com

Ori S Blumenfeld on behalf of Creditor Kathleen Ruigomez

Ori@MarguliesFaithLaw.com,

Helen@MarguliesFaithLaw.com; Angela@MarguliesFaithLaw.com; Vicky@MarguliesFaithLaw.com

Ori S Blumenfeld on behalf of Defendant ABIR COHEN TREYZON SALO, LLP, a California limited liability partnership

Ori@MarguliesFaithLaw.com,

Helen@MarguliesFaithLaw.com; Angela@MarguliesFaithLaw.com; Vicky@MarguliesFaithLaw.com

Ori S Blumenfeld on behalf of Defendant Boris Treyzon Esq

Ori@MarguliesFaithLaw.com,

Helen@MarguliesFaithLaw.com; Angela@MarguliesFaithLaw.com; Vicky@MarguliesFaithLaw.com

Ori S Blumenfeld on behalf of Interested Party Courtesy NEF

Ori@MarguliesFaithLaw.com,

Helen@MarguliesFaithLaw.com; Angela@MarguliesFaithLaw.com; Vicky@MarguliesFaithLaw.com

Evan C Borges on behalf of Interested Party Erika Girardi

eborges@ggtriallaw.com, cwinsten@ggtriallaw.com

Richard D Buckley on behalf of Interested Party L.A. Arena Funding, LLC
richard.buckley@arentfox.com

Marie E Christiansen on behalf of Creditor KCC Class Action Services, LLC
mchristiansen@vedderprice.com, ecfladocket@vedderprice.com, marie-christiansen-4166@ecf.pacerpro.com

Jennifer Witherell Crastz on behalf of Creditor Wells Fargo Vendor Financial Services, Inc.
jcrastz@hrhlaw.com

Jennifer Witherell Crastz on behalf of Creditor Wells Fargo Vendor Financial Services, LLC
jcrastz@hrhlaw.com

Ashleigh A Danker on behalf of Interested Party Courtesy NEF
Ashleigh.danker@dinsmore.com, SDCMLFiles@DINSMORE.COM; Katrice.ortiz@dinsmore.com

Clifford S Davidson on behalf of Creditor California Attorney Lending II, Inc.
csdavidson@swlaw.com, jlanglois@swlaw.com; cliff-davidson-7586@ecf.pacerpro.com

Lei Lei Wang Ekvall on behalf of Interested Party Courtesy NEF
lekvall@swelawfirm.com, lgarrett@swelawfirm.com; gacruz@swelawfirm.com; jchung@swelawfirm.com

Lei Lei Wang Ekvall on behalf of Plaintiff Elissa Miller
lekvall@swelawfirm.com, lgarrett@swelawfirm.com; gacruz@swelawfirm.com; jchung@swelawfirm.com

Lei Lei Wang Ekvall on behalf of Trustee Elissa Miller (TR)
lekvall@swelawfirm.com, lgarrett@swelawfirm.com; gacruz@swelawfirm.com; jchung@swelawfirm.com

Richard W Esterkin on behalf of Creditor Southern California Gas Company
richard.esterkin@morganlewis.com

Richard W Esterkin on behalf of Interested Party Courtesy NEF
richard.esterkin@morganlewis.com

Timothy W Evanston on behalf of Interested Party Courtesy NEF
tevanston@swelawfirm.com,
gacruz@swelawfirm.com; lgarrett@swelawfirm.com; jchung@swelawfirm.com

Timothy W Evanston on behalf of Plaintiff Elissa Miller
tevanston@swelawfirm.com,
gacruz@swelawfirm.com; lgarrett@swelawfirm.com; jchung@swelawfirm.com

Timothy W Evanston on behalf of Trustee Elissa Miller (TR)
tevanston@swelawfirm.com,

gcruz@swelawfirm.com; lgarrett@swelawfirm.com; jchung@swelawfirm.com

Jeremy Faith on behalf of Interested Party Courtesy NEF

Jeremy@MarguliesFaithlaw.com,

Helen@MarguliesFaithlaw.com; Angela@MarguliesFaithlaw.com; Vicky@MarguliesFaithlaw.com

James J Finsten on behalf of Interested Party Courtesy NEF

, jimfinsten@hotmail.com

Alan W Forsley on behalf of Interested Party Courtesy NEF

alan.forsley@flpllp.com, awf@fklawfirm.com, awf@fl-lawyers.net, addy.flores@flpllp.com

Eric D Goldberg on behalf of Creditor Stillwell Madison, LLC

eric.goldberg@dlapiper.com, eric-goldberg-1103@ecf.pacerpro.com

Andrew Goodman on behalf of Attorney William F Savino

agoodman@andyglaw.com, Goodman.AndrewR102467@notify.bestcase.com

Andrew Goodman on behalf of Petitioning Creditor Erika Saldana

agoodman@andyglaw.com, Goodman.AndrewR102467@notify.bestcase.com

Andrew Goodman on behalf of Petitioning Creditor Jill O'Callahan

agoodman@andyglaw.com, Goodman.AndrewR102467@notify.bestcase.com

Andrew Goodman on behalf of Petitioning Creditor John Abassian

agoodman@andyglaw.com, Goodman.AndrewR102467@notify.bestcase.com

Andrew Goodman on behalf of Petitioning Creditor Kimberly Archie

agoodman@andyglaw.com, Goodman.AndrewR102467@notify.bestcase.com

Andrew Goodman on behalf of Petitioning Creditor Robert M. Keese

agoodman@andyglaw.com, Goodman.AndrewR102467@notify.bestcase.com

Andrew Goodman on behalf of Petitioning Creditor Virginia Antonio

agoodman@andyglaw.com, Goodman.AndrewR102467@notify.bestcase.com

Suzanne C Grandt on behalf of Interested Party Courtesy NEF

suzanne.grandt@calbar.ca.gov, joan.randolph@calbar.ca.gov

Steven T Gubner on behalf of Interested Party Courtesy NEF

sgubner@bg.law, ecf@bg.law

Marshall J Hogan on behalf of Creditor California Attorney Lending II, Inc.

mhogan@swlaw.com, knestuk@swlaw.com

Sheryl K Ith on behalf of Creditor Daimler Trust
sith@cookseylaw.com, sith@ecf.courtdrive.com

Razmig Izakelian on behalf of Creditor Frantz Law Group, APLC
razmigizakelian@quinnemanuel.com

Lillian Jordan on behalf of Interested Party Courtesy NEF
ENOTICES@DONLINRECANO.COM, MAPA@DONLINRECANO.COM

Lewis R Landau on behalf of Creditor Virage SPV 1, LLC
Lew@Landaunet.com

Lewis R Landau on behalf of Interested Party Courtesy NEF
Lew@Landaunet.com

Daniel A Lev on behalf of Interested Party Courtesy NEF
dlev@sulmeyerlaw.com, ccaldwell@sulmeyerlaw.com; dlev@ecf.inforuptcy.com

Elizabeth A Lombard on behalf of Creditor American Express National Bank c/o Zwicker & Associates,
P.C.
elombard@zwickerpc.com, bknotices@zwickerpc.com

Craig G Margulies on behalf of Defendant ABIR COHEN TREYZON SALO, LLP, a California limited liability
partnership
Craig@MarguliesFaithlaw.com,
Vicky@MarguliesFaithlaw.com; Helen@MarguliesFaithlaw.com; Angela@MarguliesFaithlaw.com

Craig G Margulies on behalf of Defendant Boris Treyzon Esq
Craig@MarguliesFaithlaw.com,
Vicky@MarguliesFaithlaw.com; Helen@MarguliesFaithlaw.com; Angela@MarguliesFaithlaw.com

Craig G Margulies on behalf of Interested Party Courtesy NEF
Craig@MarguliesFaithlaw.com,
Vicky@MarguliesFaithlaw.com; Helen@MarguliesFaithlaw.com; Angela@MarguliesFaithlaw.com

Peter J Mastan on behalf of Interested Party Courtesy NEF
peter.mastan@dinsmore.com, SDCMLFiles@dinsmore.com; Katrice.ortiz@dinsmore.com

Edith R. Matthai on behalf of Defendant David Lira
ematthai@romalaw.com, lrobie@romalaw.com

Edith R. Matthai on behalf of Interested Party Courtesy NEF
ematthai@romalaw.com, lrobie@romalaw.com

Kenneth Miller on behalf of Interested Party Courtesy NEF
kmiller@pmcos.com, efilings@pmcos.com

Elissa Miller (TR)
CA71@ecfcbis.com, MillerTrustee@Sulmeyerlaw.com; C124@ecfcbis.com; ccaldwell@sulmeyerlaw.com

Eric A Mitnick on behalf of Interested Party Courtesy NEF
MitnickLaw@aol.com, mitnicklaw@gmail.com

Scott H Olson on behalf of Creditor KCC Class Action Services, LLC
solson@vedderprice.com, scott-olson-2161@ecf.pacerpro.com, ecfsfdocket@vedderprice.com, nortega@vedderprice.com

Carmela Pagay on behalf of Interested Party Courtesy NEF
ctp@lnbyb.com

Leonard Pena on behalf of Interested Party Robert Girardi
lpena@penalaw.com, penasomaecf@gmail.com; penalr72746@notify.bestcase.com

Michael J Quinn on behalf of Creditor KCC Class Action Services, LLC
mquinn@vedderprice.com, ecfladocket@vedderprice.com, michael-quinn-2870@ecf.pacerpro.com

David M Reeder on behalf of Interested Party Courtesy NEF
david@reederlaw.com, secretary@reederlaw.com

Ronald N Richards on behalf of Creditor Law Offices of Phili Sheldon APC
ron@ronaldrichards.com, morani@ronaldrichards.com

Ronald N Richards on behalf of Interested Party Courtesy NEF
ron@ronaldrichards.com, morani@ronaldrichards.com

Ronald N Richards on behalf of Plaintiff Elissa Miller
ron@ronaldrichards.com, morani@ronaldrichards.com

Ronald N Richards on behalf of Plaintiff Robert P Finn
ron@ronaldrichards.com, morani@ronaldrichards.com

Ronald N Richards on behalf of Trustee Elissa Miller (TR)
ron@ronaldrichards.com, morani@ronaldrichards.com

Kevin C Ronk on behalf of Creditor U.S. Legal Support, Inc.
Kevin@portilloronk.com, Attorneys@portilloronk.com

Frank X Ruggier on behalf of Interested Party Courtesy NEF
frank@ruggierlaw.com, enotice@pricelawgroup.com

William F Savino on behalf of Creditor California Attorney Lending II, Inc.
wsavino@woodsoviatt.com, lherald@woodsoviatt.com

Kenneth John Shaffer on behalf of Creditor Frantz Law Group, APLC
johnshaffer@quinnemanuel.com

Richard M Steingard on behalf of Other Professional Christopher Kamon
, awong@steingardlaw.com

Philip E Strok on behalf of Interested Party Courtesy NEF
pstrok@swelawfirm.com, gacruz@swelawfirm.com; 1garrett@swelawfirm.com; jchung@swelawfirm.com

Philip E Strok on behalf of Trustee Elissa Miller (TR)
pstrok@swelawfirm.com, gacruz@swelawfirm.com; 1garrett@swelawfirm.com; jchung@swelawfirm.com

Boris Treyzon on behalf of Defendant ABIR COHEN TREYZON SALO, LLP, a California limited liability partnership
bt@treylon.com, sgonzales@actslaw.com

Boris Treyzon on behalf of Interested Party Courtesy NEF
bt@treylon.com, sgonzales@actslaw.com

United States Trustee (LA)
ustpregion16.la.ecf@usdoj.gov

Eric D Winston on behalf of Creditor Frantz Law Group, APLC
ericwinston@quinnemanuel.com

Christopher K.S. Wong on behalf of Interested Party L.A. Arena Funding, LLC
christopher.wong@arentfox.com, yvonne.li@arentfox.com

Timothy J Yoo on behalf of Interested Party Courtesy NEF
tjy@lnbyb.com

Timothy J Yoo on behalf of Interested Party Jason M. Rund
tjy@lnbyb.com